33 Ia. 562. Even as to open platform trains it is held in many jurisdictions not negligence *per se* for a passenger to ride on the platform of a car. See *Meesel v. Lynn etc., R. R. Co.*, 8 Allen 234; *Gerstle v. U. P. R. R. Co.*, 23 Mo. App. 361. Contrary to the more liberal view in *Louisville & Nashville R. R. Co. v. Morris*, 23 Ky. L. R. 488; *Camden & Atlantic R. R. Co. v. Hoosey*, 99 Pa. St. 492; *The Cleveland, etc., Railway Co. v. Moneyhun*, 146 Ind. 147, it was declared to be negligence as a matter of law for the passenger to be riding upon the platform and a bar to recovery. For a case in which this rule was asserted but contingent upon the company providing seats. See *Graham v. McNeil*, 20 Wash. 466.

CARRIERS—PASSENGERS ON STREET CAR—RIGHT TO SEAT.—WEEKS V. AUBURN & S. ELECTRIC RY. CO., 113 N. Y. SUPP. 636.—Where plaintiff accepted transportation in a crowded street car and surrendered her ticket. *held*, that she waived strict performance so far as her contract rights were concerned to a seat, and the only duty defendant then owed her was that owing to a passenger who had contracted to ride standing.

The duty of a carrier of passengers to provide fit and suitable accommodations for all passengers that it receives for transportation includes the duty to furnish a seat. *Lane v. Choctaw, O. & G. Ry. Co.*, 91 Pac. 883 (Okl.). A passenger who exhibits his ticket and demands a seat need not surrender the ticket till the seat is furnished. *Hardenbergh v. St. Paul, M. & M. Ry. Co.*, 39 Minn. 3. It is not the duty of the passenger to so act, in providing himself with a seat, that he perform that which more properly is the duty of the conductor. *Louisville, N., O. & T. Ry. Co. v. Patterson*, 69 Miss. 421. Nor does he forfeit any rights by such temporary inconvenience. *Willis v. Long Island Ry. Co.*, 34 N. Y. 676. But if he insists upon his right to a seat he cannot remain standing and ride free; but should repudiate the contract *in toto* by quitting the train at the first suitable opportunity and recover for breach of contract. *Thompson on Carriers of Passengers*, p. 67. Upon refusal to give up ticket he does not thereby become a trespasser and can be ejected only at a regular station. *Maples v. N. Y., N. H. & H. Ry. Co.*, 38 Conn. 557.

CONTRACTS—ACTIONS—MUTUAL MISTAKE.—COHEN V. HABERMAN, 111 N. Y. SUPP. 67.—Plaintiff and defendant had been partners, and the defendant purchased the business and accounts, including rights to indemnity against defalcations of bookkeeper. The cash on hand was to be equally divided. There was no examination of the books at the time, but it was subsequently discovered that the bookkeeper had forged the firm's indorsement on checks received from customers. Forty-five hundred dollars was recovered by the defendant from bondsmen and the bank which cashed the checks, and the plaintiff sought to recover one-half. *Held*, that there was no mutual mistake, and plaintiff could not recover. Scott, J., *dissenting*.

The only causes which render a mistake of fact the subject of relief are the following: First, when the mistake constitutes a material ingredient in the contract of the parties and disappoints their intention by mutual error. *Allen v. Hammond*, 11 Pet. 63; *Scruggs v. Drivers' Executors*, 31 Ala. 274; *Webster v. Stark*, 10 Lea. (Tenn.) 406. Illustrating the above rule is *Dambmann v. Schulting*, 75 N. Y. 55, holding that a mistake